

May 7, 2010

STATE OF SOUTH DAKOTA  
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN	)	FINDINGS OF FACT,
MEETING COMPLAINT 10-01,	)	CONCLUSIONS OF LAW AND
GROTON AREA SCHOOL	)	REPRIMAND
DISTRICT	)	

The Complaint in the above entitled matter was referred to the Open Meeting Commission by the Brown County States Attorney under SDCL 1-25-6, the State's Attorney having received a notarized complaint filed under oath by Betty Breck.

The Breck Complaint alleges that the Groton Area School District (School District) violated SDCL 1-25-1.1 on June 28, 2005 when it's Board met at a special meeting and added an item to its agenda after the meeting started rather than providing 24 hour advance notice. The Complaint also alleges that the School Board violated its own policy by adding the agenda item without notice.

The State's Attorney referred the matter to the Open Meetings Commission for disposition of the allegation.

Pursuant to SDCL 1-25-1.1, public meetings shall only be conducted after proper notice is made with a proposed agenda. This notice is to be provided to the public at least twenty-four (24) hours prior to the meeting. Furthermore, the required notice shall be posted in a location visible to the public at the principal office of the public body holding the meeting. The same rule applies to special meetings to the extent that the circumstances permit. A violation of these rules is a Class 2 misdemeanor.

In this situation, it is undisputed that the School District prepared an agenda for the School Board's June 28, 2005 special meeting. The Complaint alleges that the School Board added an item less than 24 hours before the meeting. In fact, the item was added to the agenda even after the meeting was called to order and was then acted upon at that meeting. The School District acknowledges the oversight and, further, has explained that it is currently complying with SDCL 1-25-1.1

A reprimand must be issued under the terms of SDCL 1-25-6, et. seq.

### **FINDINGS OF FACT**

1. School District and its Board constitute a political subdivision of the State of South Dakota as referred to in SDCL 1-25-1.

2. The Complaint asserts that School Board's notice of a special meeting did not include all items to be discussed and that the School Board added an item to the agenda and acted upon the item at the meeting on June 28, 2005.

3. School District does not dispute the allegation that the item was added. Its minutes reflect that to be the case.

4. School District explained that the matter involved a tuck pointing bid that had already been opened and discussions had been held between the School District and the low bidder. The School Board had not yet authorized a contract with the bidder, but the low bidder notified the School District that it had time in its schedule and needed board approval to get started on the project.

5. The School District asserts that it added this item to a special meeting that was already scheduled and overlooked the fact that the 24 hour notice should have been given for this item.

6. The School District further asserts that it has been diligent since this event and has not added any items to the agenda of special board meetings.

4. As the OMC has held several times in the past, there is no “good faith” or “inadvertent error” exception to the Open Meeting Law.

5. The only exception to the 24 hour notice requirement of the Open Meeting Law law is when there is an emergency or similar unavoidable situation. The School District does not claim that the situation here was such an emergency.

6. A reprimand is warranted.

### **CONCLUSIONS OF LAW**

1. School District is an entity subject to the provisions of the open meetings law found at SDCL Chapter 1-25.

2. School Districts are required to prepare and post notice of their regular monthly meetings, with a proposed agenda, at least 24 hours prior to any meeting pursuant to SDCL 1-25-1.1. They are also required to comply with the 24 hour notice law for special meetings to the extent that circumstances permit.

3. The School District had already scheduled a special meeting and the agenda was issued. However, the 24 hour notice provision applies to each agenda item. Notice was not given 24 hours in advance for the tuck pointing item and the school board not only discussed but also acted on the item.

4. Although there are circumstances where less than 24 house notice may be necessary due to emergencies or unavoidable circumstances, the matter here does not meet that criteria.

5. The Complainant asks the OMC to rule concerning the School Board's policy. It is not clear whether the OMC would have that authority. Because the OMC has ruled that a violation of SDCL 1-25-1.1 occurred, it is not necessary to also address school policy.

**REPRIMAND**

The Groton Area School Board, as constituted on June 28, 2005, is hereby publicly reprimanded for its violation of the South Dakota Open Meetings Law.

Entered by Open Meeting Commissioners Mark Reedstrom (Chairman), Glenn Brenner, Lisa Rothschadl, Emily Sovell, John Steele